

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: February 28, 2023

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E. A.,	*	UNPUBLISHED
	*	
Petitioner,	*	No. 18-1587V
	*	
v.	*	Special Master Dorsey
	*	
SECRETARY OF HEALTH	*	Motion for Redaction.
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

\* \* \* \* \*

Ronald C. Homer, Conway Homer, P.C., Boston, MA, for Petitioner.

Amanda Pasciuto, U.S. Department of Justice, Washington, DC, for Respondent.

### **ORDER GRANTING PETITIONER'S MOTION FOR REDACTION**<sup>1</sup>

On February 7, 2023, Petitioner filed a motion to redact the undersigned's January 24, 2023 Ruling on Entitlement. Petitioner's Motion to Redact ("Pet. Mot."), filed Feb. 7, 2023 (ECF No. 117). For the following reasons, Petitioner's motion is **GRANTED**.

#### **I. RELEVANT PROCEDURAL HISTORY**

On October 12, 2018, E. A. ("Petitioner") filed a petition in the National Vaccine Injury Compensation Program.<sup>2</sup> Petitioner alleged that she suffered Bell's palsy as a result of an

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<sup>1</sup> The undersigned intends to post this Order on the United States Court of Federal Claims' website. **This means the Order will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished order contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) ("Vaccine Act" or "the Act"). All citations in this Order are to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

influenza (“flu”) vaccine administered to her on October 19, 2015. Petition at Preamble (ECF No. 1).

On January 24, 2023, the undersigned issued a Ruling on Entitlement. Ruling on Entitlement dated Jan. 24, 2023 (ECF No. 112).

On February 7, 2023, Petitioner filed a motion to redact her name to initials in the January 24, 2023 Ruling on Entitlement. Pet. Mot. at 2. Petitioner also filed an affidavit in support of her motion for redaction. Pet. Exhibit (“Ex.”) 82. Petitioner requests her name be redacted and replaced with her initials because “[d]ue to [P]etitioner’s unique background, disclosure of [P]etitioner’s full name . . . would constitute an unwarranted invasion of privacy.” Pet. Mot. at 4. The Ruling on Entitlement includes information on her past employment as an attorney in the Office of General Counsel (“OGC”) for the Respondent, U.S. Department of Health and Human Services (“HHS”), and as an active-duty registered nurse for the U.S. Public Health Services (“USPHS”). Pet. Ex. 82 at ¶ 3. During her period of employment, there were “very few commissioned [] officers who also held positions as attorneys in HHS OGC” and she “was the only female nurse officer in the Public Health Division of OGC.” *Id.* at ¶ 5. Thus, if her name is included in the Ruling on Entitlement, “colleagues, clients, and other individuals [she] worked with during her tenure,” and “anyone with internet access” could “readily deduce” her identity, easily associate her professional background, and have access to “sensitive medical information” which she “wish[es] to keep private.” *Id.* at ¶¶ 4, 5. While she has not been employed as an attorney or registered nurse since 2017, she has maintained state licensures in case she “would like to or need to expeditiously resume working in the future.” *Id.* at ¶ 4. Additionally, the Ruling on Entitlement includes details on “sensitive topics[] such as the grief [she] experienced after [her] partner’s death and how self-conscious [she is] about [her] appearance due to the sequela of [her] Bell’s palsy.” *Id.* at ¶ 6. Petitioner explained redacting her name to initials is “fair and reasonable” to reduce possibility of her discovery and “will not infringe upon the government’s interest in public disclosure” of Petitioner’s vaccine injury claim and the Court’s substantive legal analysis of the evidence. Pet. Mot. at 4-6; Pet. Ex. 82 at ¶ 2.

Respondent filed a response to Petitioner’s motion on February 15, 2023. Respondent’s Response to Pet. Mot. (“Resp. Response”), filed Feb. 15, 2023 (ECF No. 118). Respondent stated he “defers to the sound discretion of the Special Master to determine which remedy strikes the appropriate balance between the public and private interests in this instance.” *Id.* at 5. Petitioner did not file a reply.

This matter is now ripe for adjudication.

## II. DISCUSSION

A motion for redaction is governed by section 12(d)(4)(B) of the Vaccine Act. *See* § 12(d)(4)(B). That section provides that information concerning “medical files and similar files” may be redacted if its disclosure “would constitute a clearly unwarranted invasion of privacy.” *Id.* What constitutes a “clearly unwarranted invasion of privacy” requires balancing Petitioner’s “right of privacy against the public purpose of the Vaccine Act.” *W.C. v. Sec’y of Health & Hum. Servs.*, 100 Fed. Cl. 440, 460 (2011), *aff’d*, 704 F.3d 1352 (Fed. Cir. 2013). While a

petitioner has an interest in keeping sensitive medical or other embarrassing information private, the public has an interest in disclosure, so as to increase public awareness of vaccines and the medical conditions they may or may not cause. Id. at 461. In other words, sensitive information is often the subject of the litigation, and “in cases where sensitive information is the subject of the dispute, that information is routinely disclosed in decisions, to enable the reader to follow and understand the decision maker’s rationale.” Castagna v. Sec’y of Health & Hum. Servs., No. 99-411V, 2011 WL 4348135, at \*13 (Fed. Cl. Spec. Mstr. Aug. 25, 2011).

Although the Vaccine Rules make mandatory the redaction of a minor’s name, adult petitioner’s names, which are not similarly protected automatically, may also be redacted if a petitioner establishes proper grounds for redaction. See R.V. v. Sec’y of Health & Hum. Servs., No. 08-504V, 2016 WL 3776888, at \*2 (Fed. Cl. Spec. Mstr. May 10, 2016) (“[A] petitioner needs to make some showing to justify the relief of redaction; redaction is not available simply at a petitioner’s beck and call.”). The undersigned will permit redaction in cases, such as this, where a specialized showing is made.

The facts and circumstances of this case warrant redaction of Petitioner’s name to initials. Petitioner made an adequate showing for redaction. **Accordingly, Petitioner’s motion for redaction of her name to initials in the Ruling on Entitlement is GRANTED.**

Thus, the public version of the Ruling on Entitlement shall be redacted to include only Petitioner’s initials, E. A. Moreover, the undersigned further directs the clerk to amend the case caption<sup>3</sup> to the following:

* * * * *	*
E. A.,	*
	*
Petitioner,	*
	*
v.	*
	*
SECRETARY OF HEALTH	*
AND HUMAN SERVICES,	*
	*
Respondent.	*
	*
* * * * *	*

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey

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<sup>3</sup> If either party objects to the undersigned’s redaction of the case caption, a motion requesting the undersigned to reconsider redaction of the case caption may be filed.

Special Master